



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPF
FAX: (617) 727-6549

M-95-06

Issued: June 1995

Revised: June 25, 2001

TO: City, Town and District Clerks and Treasurers,
Boards of Election Commissioners, and
Interested Persons

FROM: Michael J. Sullivan *mjs*
Director

SUBJECT: Expenditure of public resources by cities, towns or
other local or regional governmental units: M.G.L. c. 55, s. 22A

M.G.L. c. 55, s. 22A requires the treasurer of any city, town or other governmental unit which has made expenditures or used public resources "to influence or affect the vote on any question submitted to the voters" to file a report, Form CPF M22A, disclosing such activity. This memorandum outlines the procedure that city and town clerks or election officials, and treasurers or financial officers of local or regional governmental units should follow in order to comply with the law.

1. The Anderson decision.

The campaign finance law prohibits the use of any public resources for any political purpose. The law demonstrates "a general legislative intent to keep political fundraising and disbursing out of the hands of nonelective public employees..." Anderson v. City of Boston 376 Mass. 178, 186-187 (1978). Therefore, cities, towns and other governmental units must be careful to ensure that expenditures of public resources are not made to promote, oppose or otherwise influence a ballot question or candidate's election.

2. "Public resources" defined.

Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines, computers and word processors, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for political purposes is inconsistent with state law and should be avoided. See IB-91-01 (summarizing this office's interpretation of Anderson) and IB-92-02 (discussing the extent to which policy-making officials may act or speak in support of or opposition to ballot questions).



3. Distribution of "informational" newsletters regarding ballot questions.

Cities, towns and other governmental units have a legitimate interest in keeping residents informed. They may not, however, distribute even "informational" newsletters regarding ballot questions absent express statutory authorization by the Legislature. See Elections Division Memorandum dated July 26, 1991. For example, even a truly objective flyer including a fair and impartial summary of a ballot question and arguments by proponents and opponents may not be distributed to voters or a class of voters absent statutory authorization. The legislature has enacted legislation permitting only four municipalities to distribute such "informational" flyers: Cambridge (see 1989 Mass. Acts ch. 630), Newton (see 1987 Mass. Acts ch. 274), Sudbury (see 1996 Mass. Acts ch. 180) and Burlington (see 1998 Mass. Acts ch. 89).

4. Filing of the public disclosure statement.

M.G.L. c. 55, s. 22A requires the treasurer or financial officer of any city or town or other governmental unit which has made expenditures or used public resources "to influence or affect the vote on any question submitted to the voters" to file a Form CPF M22A. The requirement to file the form does not, however, reflect an authorization allowing such expenditures.

For example, if a superintendent of schools prepares and distributes a flyer to influence a Proposition 2 1/2 ballot question, the campaign finance law would be violated. Since the distribution of any material presenting only one viewpoint on a ballot question would influence the election, a statement reflecting all expenditures or the cost or value of public resources used (on Form CPF M22A) must be filed with the clerk. The form must be completed by the treasurer or financial officer of the governmental unit which made the expenditures, i.e., it would have to be filed by the treasurer of the city or town unless the expenditure was authorized by another governmental unit such as a regional school district.

The superintendent could avoid the problem by encouraging persons supporting the superintendent's position to organize a political committee to privately raise and spend funds to provide information and advocate a particular vote.

5. Failure to file a public disclosure statement.

If a clerk believes expenditures have been made to influence the vote on a ballot question, but the treasurer or financial official has not filed an accurate and complete report, the clerk should notify the treasurer or officer of the responsibility to file, in accordance with section 28 of the campaign finance law. Section 28 also provides that five registered voters may file a written complaint with a city or town clerk requesting the clerk to notify the treasurer or officer of the obligation to file. In addition, any person who believes that a treasurer or financial official has authorized expenditures to influence or affect the vote on a question submitted to the voters, but has failed to file an accurate and complete report, has the options specified in paragraph 7 of this memorandum.

6. Examination of the disclosure statement.

M.G.L. c. 55, s. 22A specifies that in the case of a city or town, the city or town clerk, "shall examine the accounts submitted by cities and towns for political expenditures, and may order

restitution of public funds which have been adjudicated to have been spent contrary to law by public officials." Therefore, when a clerk receives a completed form M22A, the clerk must examine the form and may request more information from the treasurer or financial officer if the form appears incomplete. After reviewing the form, the clerk may recommend, but is without authority to compel, restitution, unless a court has adjudicated that the expenditure was illegal. If such adjudication by a court has occurred, the clerk may order restitution.

7. Obtaining an order compelling restitution.

A clerk or any other person who wants to obtain an order compelling restitution has a number of options:

(1) Refer the matter to OCPF. This office has authority to investigate alleged violations of the campaign finance law, and may refer evidence of an alleged violation to the attorney general after a hearing, in accordance with M.G.L. c. 55, s. 3.

(2) Ask the attorney general, the local district attorney, or city or town solicitor, to review the matter and take appropriate action.

(3) File a legal action pursuant to M.G.L. c. 56, s. 59 or any other statutory provision which may be applicable.

8. Persons who may be required to provide restitution.

Restitution, either voluntary or pursuant to a court order, should be made by the person or persons responsible for the improper expenditure of public resources. Payment would be from that person(s) to the governmental unit which was the immediate source of funds for the expenditure. For example, if an expenditure was made from the funds of a regional school district, restitution would be provided by the superintendent or other person(s) authorizing the expenditure, to the treasury of the school district. Restitution would not be made to the treasuries of the towns which comprise the district.

Rather than payment being made by the person responsible for the expenditure, a political committee may be established to raise funds to provide restitution. The committee would have to register with the city or town clerk as a ballot question committee and file campaign finance reports with the clerk, reflecting all funds raised or spent. Public employees may not solicit funds to help pay for restitution since such solicitation would violate M.G.L. c. 55, s. 13. Once restitution has taken place, the ballot question committee must dissolve.

If you have any questions regarding this memorandum please do not hesitate to contact this office.